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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,860	02/01/2001	Steven W. Keck	P125US	8416

7590 01/23/2006
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 Wilshire Boulevard, Seventh Floor
Los Angeles, CA 90025

EXAMINER

NGUYEN, STEVEN H D

ART UNIT PAPER NUMBER

2665

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/775,860	Applicant(s) KECK ET AL.	
	Examiner Steven HD Nguyen	Art Unit 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13,15-27,29-41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13,15-27,29-41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/22/05 has been entered.

Notice

2. Claims 12, 28 and 48 must change their status to **“cancel”** because these claims **canceled on 12/31/04**. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 43-45 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is not limited to a practical application. Viewed as a whole, the claimed invention merely expresses the data structure of a frame or data unit. It does not impart any function to the processing system, i.e., the claimed invention is not practical applied. Instead, the claimed invention merely describes information in the field of data unit or frame. The claimed data structures are clearly not a process because they do not have any limitation to a practical application. The other three § 101 classes of machine, compositions of

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matter and manufactures can be group as product claims, and the product classes have required physical structure or material. The claimed data structure does not itself perform any useful concrete and tangible result, i.e., no post solution activity, and thus does not fit within the definition of a machine. In addition, the claimed data structures are an abstract construct; therefore, the claimed data structures do not fall within the product classes, machine and composition of matter because the limitation after wherein clause are optional to the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-13, 15-27, 29-41 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (USP 5544222) in view of McIntosh (US 2002/0077112, Provisional Application 60/227392).

Regarding claims 1, 15, 29 and 43, Robinson discloses a method and system for controlling the flow of data in a base transceiver station (Figs 3 or 4) comprising providing first and second upstream devices (Fig 4, Ref 44 and 44'); providing a downstream device (Fig 4, Ref 45s) including a backplane interface (Fig 4, Ref 42) wherein the backplane interface is independently coupled to each of the first and second upstream devices (Fig 4, Ref 44 and 44' "upstream devices" are independently coupled to the backplane interface of transceiver 45 via backplane 42 bus); and enabling simultaneous communication between the downstream device and the first and second upstream devices via the backplane interface (Col. 18, lines 16-21, See Fig 4, Load sharing). However, Robinson does not fully disclose a downstream device simultaneously communicates with first and second upstream devices in order to perform a load sharing. In the same field of endeavor, McIntosh discloses a BTS "downstream" transmits "simultaneous communication" its traffic equally to the BSCs "upstream devices" (See Provisional, Page 7, line 16 to page 8, lines 2).

Since, Robinson suggests a load sharing scheme on the system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a load sharing scheme such a device transmits its traffic to both upstream devices as disclosed by McIntosh's system and method into the teaching of Robinson. The motivation would have been to obtain an efficiency system and reduce a cost of the system.

Regarding claims 2, 16 and 30, Robinson discloses the first and second upstream devices each comprise a base transceiver station manager (Fig 4, Ref 44 and 44' and Fig 8 and col. 19, lines 22-54, Ref 803).

Regarding claims 3, 17 and 31, Robinson discloses the downstream device comprises multiple independent downstream devices (Fig 4, Ref 45s).

Regarding claims 4, 18 and 32, Robinson discloses each independent downstream device comprises a channel module (Fig 4, Ref 45s).

Regarding claims 5, 19 and 33, Robinson discloses the first and second base transceiver station managers include redundancy capabilities (Fig 4, Ref 44s and col. 19, line 15-21).

Regarding claims 6, 20, and 34, Robinson discloses the back plane interface is independently coupled to each base transceiver station manager (Fig 4, Ref 42).

Regarding claims 7, 21 and 35, Robinson discloses the back plane interface transmits and receives data to and from the first and second base transceiver station managers simultaneously via independent data paths (Fig 4, Ref 42).

Regarding claims 8, 22 and 36, Robinson discloses the back plane interface comprises a clock reference selection circuit and a data path multiplexor (Fig 4, Ref 42 and col. 18, lines 16-41, multiplexing the data from the ref 45s onto the bus).

Regarding claims 9, 23 and 37, Robinson discloses the clock reference selection circuit is utilized to immediately switch to the first or second base transceiver station manager upon detection of a failure of the first or second base transceiver station manager (Fig 4, Ref 42 and col. 18, lines 16-41).

Regarding claims 10, 24 and 38, Robinson discloses the back plane interface further comprises a data path de-multiplexor (Fig 4, Ref 42 and col. 18, lines 16-41, demultiplexing the data from ref 44 to the ref 45s).

Regarding claims 11, 25 and 39, Robinson discloses the data comprises a data frame structure (col. 22, lines 7-26).

Regarding claims 12, 26 and 40, Robinson discloses the data frame structure comprises a frame sync portion (col. 22, lines 7-26, Flag), a provisioning information portion (col. 22, lines 7-26, address), a control portion (col. 22, lines 7-26, control) and a payload portion (col. 22, lines 7-26, information).

Regarding claim 44, Robinson discloses the data frame structure is in a table format (col. 22, lines 7-26).

Regarding claims 13, 27, 41 and 45, Robinson discloses the data frame structure is in a table format (col. 22, lines 7-26). However, Robinson and McIntosh fail to disclose the table format comprises seven columns and ten rows. However, it would have been obvious to one of ordinary skill in the art at the time of invention was made to implement a data frame structure with ten rows and seven columns instead of one row and plurality of columns into the teaching of Robinson and McIntosh because it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). The motivation would have been to improve the throughput of the base station.

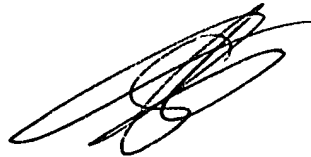
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven HD Nguyen
Primary Examiner
Art Unit 2665
January 18, 2006